

REMARKS

Claims 1 and 4-5 stand rejected under 35 U.S.C. 102(e) as being anticipated by Wolff (U.S. 6,009,427). With respect to claims 4 and 5 of the present invention, these claims have both been cancelled herein, rendering the rejection thereto now moot. With respect to independent claim 1, Applicants respectfully traverse the rejection at least in light of the amendments to claim 1 herein. The Examiner can see that the subject matter from claim 2 (now cancelled) has been incorporated into independent claim 1. The subject matter of claim 2 was not included in this Section 102 rejection by the Examiner, and therefore the rejection should be withdrawn for at least this reason.

Claim 2 stood rejected under 35 U.S.C. 103(a) as being unpatentable over Wolff. Although claim 2 has been cancelled without prejudice herein, Applicants acknowledge that the subject matter from this claim now appears in independent claim 1, and therefore Applicants will address this particular Section 103 rejection as it would apply to claim 1 of the present invention, as now amended. Applicants thus traverse this Section 103 rejection, as applied to independent claim 1, because Wolff does not disclose or suggest all of the amended features of independent claim 1, including those beyond the subject matter of original claim 2 by itself.

As now featured in independent claim 1, the transmitter-side storage information management means and the receiver-side storage information management means each manage a writing start number for use in writing/reading the data into/from respectively the data storage device. The storage information is thus exchanged between the

transmitter-side and the receiver-side storage information interface means. By this exchange, the writing start number and the reading end number of the storage information, under the management of the two storage information management means, are updated to assume identical values. Wolff fails to teach or suggest all of these features and/or advantages of the present invention.

For example, the Examiner cites to only col. 14, lines 52-54 of Wolff for somehow teaching the writing start number of the present invention. This brief, two-line description in Wolff, however, fails to read upon all of the recited features and limitations of the writing start number of the present invention. In this portion of Wolff's text, Wolff discloses nothing more than a pointer. There is no additional description cited by the Examiner, for example, that this pointer is also managed by both of a transmitter-side and receiver-side storage information management means, as clearly recited by the present invention. Accordingly, the asserted case of obviousness fails according to Section 2143.03 of the MPEP, which requires that each and every feature and limitation of the present invention must appear within the prior art.

The rejection is further deficient with respect to the Examiner's remarks regarding a "read pointer." Whether or not the Examiner is correct (which Applicants do not concede) that Official Notice allows the Examiner to assume that "searching data requires the reading of such data," this assertion, by itself, does not consider all of the recited language that now appears in claim 1 of the present invention. Specifically, regardless of the existence of a "read pointer," neither Wolff, nor the Examiner's Official Notice, teaches or suggests

that a reading end number is managed by either of the two management means recited in the present invention. Accordingly, for at least these reasons as well, the asserted Section 103 rejection against the subject matter of original claim 2 is also respectfully traversed, as applied to newly amended claim 1, and therefore should be withdrawn as well.

As a final matter, although Applicants appreciate the Examiner's disclosure regarding his special skill in this field of art, namely, "as the recipient of a masters degree in computer science from Virginia Polytechnic Institute and State University," this level of special skill in the art is exactly the type of evidence which may not be used against the present invention in the determination of patentability. The standard which must be applied to the present claims is whether one of ordinary skill in the art would find the present invention obvious from the affirmative teachings and suggestions that exist within the prior art. A master's degree from a noted university is significantly more than what is typically available to one of ordinary skill.

Additionally, and regardless of the Examiner's own particular skill in the art, the Federal Circuit has expressly held that the Examiner's personal knowledge and understanding of the field of art, whether ordinary or special, may not be the basis for an obviousness rejection against the claims. See In re Lee, 277 F.3d 1338, 61 U.S.P.Q.2d 1430 (Fed. Cir. 2002). Patent law *presumes* that the Examiner is skilled in the particular field of art to which he is assigned. Nevertheless, such skill is not "objective evidence," nor is it "capable of review and rebuttal." For example, the Examiner has not submitted the basis for his personal knowledge in the form of an Affidavit, and one which details the exact date the

Examiner gained his personal knowledge, or from which publications this knowledge was gained. The present Application, for example, claims foreign priority to over six years ago. The Examiner gives no indication that he completed his master's degree prior to six years ago.

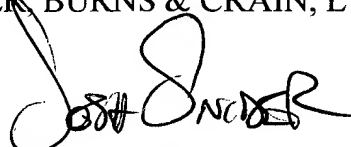
And even if the Examiner can establish that his own personal educational degree was completed prior to the date of invention, such personal knowledge is not published, and is therefore incapable of objective and review and rebuttal by Applicants. The Federal Circuit has, for this very reason, ruled that the personal knowledge and experience of a particular Examiner may not form the basis underlying an obviousness rejection. The Examiner is obligated to either point to where such specific subject matter is taught or suggested within a published prior art reference of record, or the Examiner must withdraw the rejection that is based upon such unsupported theories.

For all of the foregoing reasons, Applicants submit that this Application, including at least claim 1, is in condition for allowance, which is respectfully requested. The Examiner is invited to contact the undersigned attorney if an interview would expedite prosecution.

Respectfully submitted,

GREER, BURNS & CRAIN, LTD.

By

A handwritten signature in black ink, appearing to read "Josh C. Snider", is written over the printed name.

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